

Case No. F1600(V)

REMARKS

Applicants, again, wish to thank Examiner Paden for her keen review of the present patent application. Applicants, also, respectfully welcome the Examiner to contact the undersigned counsel with suggestions that would expedite the prosecution of this application, thereby enabling Applicants to further business objectives.

I. Previous Rejection Under 35 USC §103

Applicants acknowledge that the previous rejection under 35 USC §103, over van Heteren et al. (U.S. Patent No. 5,190,781) in view of Desrosier and further in view of Ross (U.S. Patent No. 5,632,596), has been withdrawn.

II. Previous Rejection Under 35 USC §103 - Withdrawn

Applicants acknowledge that the previous rejection under 35 USC §103 over Ross (U.S. Patent No. 5,632,596) in view of Desrosier and further in view of van Heteren et al. (U.S. Patent No. 5,190,781), has been withdrawn.

III. Rejection Under 35 USC §103

The Examiner has issued a final rejection of claims 1 – 27 under 35 USC §103 as being unpatentable over Trainor, U. S. Patent No. 4,423,084 (hereinafter, '084) in view of Ross, U. S. Patent No. 5,632,596 (hereinafter, '596). In the rejection, the Examiner maintains that the '084 reference discloses a method for making a salad dressing with

ingredients that include starch, acidulant, egg, oil, water and sweetener. The Examiner further maintains that the ingredients set forth in the '084 reference are mixed and then processed in a colloid mill with a rotor and a stator. The Examiner continues by maintaining that the claimed invention differs from the '084 reference in that the '084 reference fails to describe specific apparatus features. Nevertheless, the Examiner relies on the apparatus description of the '596 reference to "cure" the many deficiencies of the '084 reference. Also, it is noted that the Examiner has dismissed Applicants' arguments set forth in the reply under 37 CFR §1.111. In this regard, the Examiner maintains that the obviousness rejection is warranted and should be made final.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

The present invention, as set forth in independent claim 1, is directed to a process for making a dressing comprising the steps of:

- (a) combining raw ingredients in a pre-mix tank comprising a means for mixing to form a coarse emulsion, and
- (b) processing the coarse emulsion in one pass through an in-line mixer/emulsifier comprising at least one set of stator and rotor, and a variable speed motor to drive the rotor, wherein the stator and rotor comprise co-axially engageable rings of teeth having a plurality of concentric vanes and concentric wells with generally slanted side walls from each vane to each well and the rotor and

stator when engaged are such that the concentric vanes of the stator align with the corresponding concentric wells of the rotor and the concentric vanes of the rotor align with the corresponding concentric wells of the stator with the corresponding generally slanted walls of the stator and rotor aligned and when engaged a gap having an axial opening dimension and a slanted opening dimension is defined by each concentric vane and each concentric well and the aligned slanted walls and the gap is adjustable in increments of about 0.015 inches in axial opening dimension wherein the dressing is mayonnaise or a salad dressing and an oil phase and an emulsifier phase are raw ingredients combined in the pre-mix tank.

The invention of claim 1 is further defined by the dependent claims which claim, among other things, axial opening dimensions, the diameter of the stator and rotor, the rotational speeds of the rotor, the tip speed of the rotor, the through put of the process, the characteristics of the rings of teeth of the stator and rotor, and the presence of radial channels on the stator and rotor. The process of claim 1 is still further defined in that the raw ingredients can comprise an oil phase, an egg phase, an aqueous phase, a starch paste phase, a sweetener phase, an acidulant phase, optional solids, or combinations thereof. Claims 23 and 24 identify the raw ingredients as being those which can be employed to make a mayonnaise composition comprising from about 65% to about 81% oil, or from about 19% to about 35% oil, or from about 5% to about 6% oil, as well as ingredients for making a salad dressing comprising from about 45% to about 55% oil. Claims 25-27 define the type of emulsifier and the amounts employed.

Claim 22 is directed to a spoonable or pourable dressing made by the process of claim 1.

In contrast, and as already made of record, the '084 reference merely describes a process for making emulsified salad dressings in the absence of freeze-resistant starch.

The '084 reference does not teach, suggest, or disclose, for example, the steps of forming a premix of raw ingredients which include an oil phase and an emulsifier phase to make a coarse emulsion to be fed in One Pass to an in-line mixer/emulsifier having a specific stator and rotor arrangement, as claimed. Moreover, the '084 reference does not teach the specific oil amounts, additives and emulsifier amounts set forth in the presently claimed invention.

Furthermore, the '084 reference fails, in every way, to disclose: gap adjustability (0.015 increments); rotor and stator diameters, critical rotor speeds; tip speeds; throughput rates, all of which are required to make superior food products.

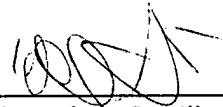
The vast deficiencies of the '084 reference are not cured by the '596 reference since the '596 reference only discloses a rotor and stator assembly in an industrial mixer that can be used to blend various materials like adhesives, coatings, cosmetics, foods, pharmaceuticals and plastics. The '596 reference does not, even remotely, suggest blending mayonnaise and/or salad dressing compositions in One Pass. Moreover, nothing in the '596 reference suggests the critical limitations outlined above needed to make a superior food product. Applicants respectfully submit that important and critical limitations like axial opening dimensions, rotor tip speeds and throughput rotor cannot be ignored.

In view of the above, it is clear that the Examiner has not established a *prima facie* case of obviousness as required under 35 USC §103. Therefore, Applicants respectfully request that the obviousness rejection be withdrawn and rendered moot.

Applicants respectfully submit that all claims of record are now in condition for allowance. Reconsideration and favorable action are earnestly solicited. Applicants further submit that this application is ready for Appeal.

In the event the Examiner has any questions concerning the present patent application, she is kindly invited to contact the undersigned at her earliest convenience.

Respectfully submitted,



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